

GMC

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
the City of Santa Barbara for Review)
of Order No. 72-4 of the California)
Regional Water Quality Control Board,)
Central Coast Region)

Order No. 72-18

On July 10, 1972, the City of Santa Barbara (hereafter petitioner), pursuant to Water Code Section 13320 et seq., filed a petition for review of Order No. 72-4 of the California Regional Water Quality Control Board, Central Coast Region. Order No. 72-4 was adopted June 9, 1972, and requires the petitioner to cease and desist from violation of requirements. The order includes a connection ban on additional discharges into petitioner's system. The petitioner requests review of the action of the regional board in issuing Order No. 72-4, and further specifically requests a hearing by State Water Resources Control Board, a temporary stay of the connection ban, an order rescinding said connection ban, and an order modifying Provision 5 of Order No. 72-24, waste discharge requirements for petitioner adopted by said Central Coast Regional Board on May 12, 1972. Both in its petition, and by supplemental letter of July 13, 1972, the petitioner has indicated that it has no objection to the quality specifications contained in Order No. 72-4, if the connection ban is vacated and rescinded.

Before turning to other contentions of the petition, one request of the petitioner is procedurally unsound and should be settled. We are asked to modify the following provision of Order No. 72-24, Waste Discharge Requirements for City of Santa Barbara, adopted by the Central Coast Regional Board on May 12, 1972. This provision reads as follows:

"5. Final plans and specifications for the planned plant expansion shall be submitted prior to May 1, 1972, or in accordance with a deferred time schedule established by the State Water Resources Control Board."

Petitioner contends that, for various reasons detailed in its petition, it is not possible for the petitioner to comply with this requirement, and we are asked to modify this requirement to allow a reasonable time for the submission of final plans and specifications. The contentions of petitioner in this regard may have merit. The problem is that this is not, at least at present, the proper forum for the relief requested. This requirement was initially contained in Order No. 72-24, adopted by the Central Coast Regional Board on March 10, 1972. Subsequently Order No. 72-24, adopted May 12, 1972, as a revision of the previous order, continued this requirement. Even if we were disposed to consider the 30-day appeal period provided by Water Code Section 13320, as running from May 12, 1972, rather than March 10, 1972, it is obvious that the present petition is not timely on this point. Time to appeal from the order of May 12, 1972, expired on June 13, 1972. While we might, on our own motion under Section 13320, review the orders of March 10, 1972, and May 12, 1972, we have determined that we should not do so. Petitioner's remedy is before the appropriate regional board under Water Code Section 13263(e), for any necessary review and revision of requirements.

With respect to the other contentions of petitioner, by reason of the nature of these contentions, we have fully reviewed the entire record before us in order to determine whether the regional board action was appropriate and proper. Because of the

circumstances of this particular case, we feel that some comment on the background relative to this matter is necessary. We will then consider the evidence presented at the regional level on alleged actual violations, the evidence presented at the regional level insofar as it relates to threatened violations, and other contentions of the petitioner. All references herein made to a transcript refer to the Reporter's Transcript of Hearing Re City of Santa Barbara, June 1, 1972.

I. BACKGROUND AND STATUS OF APPLICABLE REQUIREMENTS

Waste discharge requirements were originally set for petitioner on October 1, 1957. Revised and superseding requirements were adopted October 9, 1970. These requirements were to become effective upon completion of new facilities or on January 1, 1973, whichever was earlier. Revised and superseding requirements were again adopted on March 10, 1972. Of the requirements adopted on March 10, 1972, specifications 1 (concerning settleable solids), 2 (concerning suspended solids), 9 (concerning discoloration), 13 (concerning dry-weather flow) and 15 (concerning light transmittance) were made effective upon completion of new facilities or by January 1, 1974, whichever was earlier. The remainder of the specifications were made effective immediately. The requirements of March 10, 1972, also required final plans and specifications for the planned plant expansion to be submitted prior to May 1, 1972, or in accordance with a deferred time schedule established by the State Water Resources Control Board.

On May 12, 1972, revised requirements were again adopted. These requirements were apparently conceived as being a modification of the March 10, 1972, requirements since they did not specifically state that the March 10, 1972, requirements were either rescinded or superseded. The order of May 12, 1972, also carried forward the previous provision of the order of March 10, 1972, regarding plans and specifications by May 1, 1972.

In reviewing the evidence presented to the hearing panel and hence to the regional board, on alleged violation of requirements, it becomes necessary to determine what requirements were in effect at particular periods of time. The requirements involved and their effective dates can best be summarized as follows:

1. Between October 9, 1970, and March 10, 1972, because of the form of the order of October 9, 1970, there were no requirements applicable to the petitioner.
2. Between March 10, 1972, and May 12, 1972, the following subjects were controlled by requirements specified in the order of March 10, 1972, which requirements were effective as indicated:

<u>Subject of Requirement</u>	<u>Requirement Effective</u>
1. Settleable Solids	Plant Expansion or 1/1/74
2. Suspended Solids (Effluent)	" " " "
3. Sludge & Supernatant	3/10/72
4. Floating or Suspended Solids (Receiving Water)	"
5. Bottom Deposits	"
6. pH	"
7. DO	"

<u>Subject of Requirement</u>	<u>Requirement Effective</u>
8. Coliform	3/10/72
9. Discoloration	Plant Expansion or 1/1/74
10. Aquatic Life	3/10/72
11. Pollution	"
12. Nuisance	"
13. Dry Weather Flow	Plant Expansion or 1/1/74
14. Toxicity	3/10/72
15. Light Transmittance	Plant Expansion or 1/1/74
16. Pesticides	3/10/72

3. As of May 12, 1972, when the March 10, 1972, requirements were revised, the following subjects were controlled by requirements, which requirements were effective as indicated:

<u>Subject of Requirement</u>	<u>Requirement Effective</u>
1a. Settleable Solids Prior to 1/1/74	5/12/72
1b. Settleable Solids After 1/1/74	"
2. Suspended Solids (Effluent)	Plant Expansion or 1/1/74
3. Sludge & Supernatant	5/12/72
4. Floating or Suspended Solids (Receiving Waters)	"
5. Bottom Deposits	"
6. pH	"
7. DO	"
8. Coliform	"
9. Discoloration	Plant Expansion or 1/1/74
10. Aquatic Life	5/12/72

<u>Subject of Requirement</u>	<u>Requirement Effective</u>
11. Pollution	5/12/72
12. Nuisance	"
13a. Dry Weather Volume @ 8 MGD	"
13b. Dry Weather Volume A 16 MGD	5/12/72, to be complied with on completion of facilities
14. Toxicity	5/12/72
15. Light Transmittance	Plant Expansion or 1/1/74
16. Pesticides	5/12/72

II. EVIDENCE RELATED TO ACTUAL VIOLATION OF REQUIREMENTS

On or about May 12, 1972, a hearing panel was appointed and the petitioner was subsequently notified of the hearing, which was set for June 1, 1972. Notice was actually received by the petitioner on May 16, 1972. The purpose of the hearing was to take evidence on whether or not the petitioner was discharging or threatening to discharge waste in violation of the requirements issued on March 10, 1972, and revised May 12, 1972. The subjects of the hearing and the evidence related to actual violation can be summarized as follows:

1. Settleable Solids

There were no effective requirements on the petitioner between October 9, 1970, and May 12, 1972. As of May 12, 1972, the requirements provided that the effluent should not exceed 0.3 ml/l settleable solids in 80% of samples, and that no single sample should exceed 1.0 ml/l.

The only evidence indicating an actual violation of these requirements involved four samples taken on May 24 and May 25, 1972. Two of the samples violated the requirements, and two did not. The results of the samples were as follows:

<u>Date and Time</u>	<u>Concentration</u>
May 24, 1972, at 11:15 a.m.	2.2 ml/l
" " 4:20 p.m.	.15 ml/l
May 25, 1972, at 10:45 a.m.	1.1 ml/l
" " 2:25 p.m.	.10 ml/l

The petitioner offered evidence of samples between May 18, 1972, and the hearing, for the purpose of proving compliance. The evidence was refused as being without proper foundation since the petitioner could not or would not inform the board of the operating conditions of the plant when the samples were taken. (See transcript, pp. 40-41, 43-48, 95-98.)

2. Suspended Solids (Effluent)

No evidence was offered specifically directed to this requirement. In any event, by reason of the form of the various orders, there was no requirement immediately effective against the petitioner.

3. Sludge and Supernatant Liquor

On March 10, 1972, a requirement became effective providing that "No raw or digested sludge, supernatant liquor, or untreated sewage may be discharged to the receiving water". This requirement was carried forward by the order of May 12, 1972.

The petitioner testified that there had been no direct discharge to the receiving waters since March 1, 1972. (See transcript, pp. 58-60.) The staff took the position that

the requirement was being violated by an indirect discharge of the supernatant to the receiving waters since the discharge at the headworks into an already overloaded system resulted in ultimate discharge to the receiving waters.

(See transcript, pp. 81-82.)

There was no direct evidence of discharge of sludge. The staff did present a report concerning the method of sludge handling which concluded that, based upon the information available, the sludge was discharged to the ocean, either by direct discharge to the ocean outfall or by return to the headworks. The petitioner testified that the sludge was presently being pumped to the primary digester which was acting as a septic tank. (See transcript, pp. 70-72.)

4. Floating or Suspended Solids (Receiving Waters)

The order of March 10, 1972, prohibited floating or suspended solids in the receiving waters. This requirement was carried forward by the order of May 12, 1972. Mr. Breining of Public Health testified to thirteen recorded observations in the area. Of the observations involved, four involved no floating particulates and nine involved floating particulates. The observations were made between March 8 and March 23, 1972. We cannot determine the exact times of the various observations from the record. Mr. Ellsworth of Public Health testified that there had been few solids observed since March 1, 1972. (See transcript, pp. 105-106.)

5. Discoloration

No evidence was offered, and the requirement was not effective at the time involved.

6. Pollution

No specific evidence was offered.

7. Nuisance

No specific evidence was offered.

8. Dry Weather Volume

Evidence of volume was offered for various periods of time. The requirement at 8.0 MGD became effective on May 12, 1972, and no evidence was offered on volumes handled after that date.

III. EVIDENCE RELATED TO THREATENED VIOLATIONS OF REQUIREMENTS

.As previously stated, the hearing on June 1, 1972, was also held to consider threatened violations of the requirements already referred to above. Our review of the record indicated that evidence on threatened violations may be summarized on the following basis.

1. Settleable Solids

As already noted, the requirement that, prior to January 1, 1974, the effluent should not exceed 0.3 ml/l settleable solids, in 80% of samples became effective May 12, 1972. Evidence was introduced that this parameter had never, or at least very rarely, been met by the petitioner for almost 2-1/2 years. The average for 1970 was almost three times the requirement involved, being 0.89 ml/l. The average for 1971 was almost as high, being 0.83 ml/l. In January 1972, of eight samples taken, the parameter of 0.3 ml/l would have been met only once. One sample was ten times the parameter set on May 12, 1972, being 3.0 ml/l. In February, of three samples, only one would have met the parameter applicable after May 12, 1972. In March, of 16 samples taken, the parameter would have been met only five times. In April, of 20 samples taken, the requirement would have been met only eight times. In May, through May 11, the parameter would have been met only twice in ten samples. While these samplings may not be evidence of actual violation of requirements, since requirements were not then in effect on settleable solids, still the prior history of the facility is certainly relevant on whether the facility threatens in the future to violate the requirement effective on and after May 12, 1972. There may in fact be no better evidence of whether a particular facility can and will

comply with an appropriate requirement than its past history. Presumably, this facility was operating effectively during at least a portion of the time involved in these samplings. If so, the samplings certainly give some basis for evaluation of whether or not its product effluent will satisfy the parameter involved in the future.

At least two other factors bearing upon a threatened violation of requirements were in evidence. The facility was, and for some time apparently had been, in a poor condition of repair. For a period of one year, one of the digesters had actually been out of service. (See transcript, p. 49.) At the time of the hearing, neither digester was operative. One digester was completely inoperative. (See transcript p. 50.) The other digester was being operated as a large septic tank. (See transcript, p. 71.) It was admitted by the petitioner that this digester was rapidly approaching its capacity. (See transcript, p. 71.) The sludge centrifuge was not operating. (See transcript, p. 25.) In addition, since sometime in February 1972 the supernatant liquor (and according to the staff at least portions of the sludge) was being returned to the headworks. This, in and of itself, would increase the load on a system already loaded to capacity.

The second factor in evidence involved the volume flow of the facility. The design volume of the facility as shown by the staff amounted to 8.0 MGD. The petitioner testified that it had never exceeded this volume on a dry weather volume basis. (See transcript, p. 64.) On the other hand,

the maximum dry weather volume was admittedly as high as 7,270,000 MGD. Staff records indicated that the average volume for 1970 was 7.84 MGD and that for 1971 the average volume was 7.74 MGD. Volumes as late as May 1972 show numerous daily volumes substantially in excess of 7 MGD.

The petitioner itself indicated that it probably could not meet the requirements of the May 12 order. In its statement, and in the testimony of Mr. Hogel, it was noted that there probably would be periods when the petitioner could not meet the May 12 requirements. (See transcript, p. 50.) So also, the petitioner at least recognized the fact that various repairs and improvements might not even be sufficient to meet the requirements, noting that if the improvements are not sufficient, the petitioner would install chemical flocculation in 30 days. (See transcript, p. 51.)

Against this evidence, the petitioner sought to show that neither the cease and desist order nor the connection ban was warranted because the petitioner was taking or had taken certain remedial steps. (See transcript, p. 67.) It is apparent, however, that the petitioner's facilities will not be fully operative until at least October 15, 1972, even if the petitioner is able to comply with its own time schedule. (See transcript, p. 68.)

One other point bears comment. By the provisions of the March 10 order, carried forward on May 12, 1972, final plans were to be submitted by May 1, 1972, for construction of the new facilities. While the petitioner complains that this

time schedule now unreasonable because of the results of the bond election in April, it is not contended that the time schedule was inappropriate in March when it was in fact adopted. It is not disputed that the schedule has not been met. It is also not disputed that failure to meet this date will probably make it impossible to meet the requirement imposed on March 10, 1972, and carried forward by the order of May 12 as to settleable solids after January 1, 1974. Staff evidence would clearly indicate at least twenty months between plans and completion. Under Administrative Code, Title 23, Section 2242, failure to meet this intermediate date is itself a threatened violation on which a cease and desist order should be issued.

IV. OTHER CONTENTIONS BY PETITIONER

Petitioner contends, on numerous grounds, that it was not given a fair hearing. We have considered all of the contentions made. By reason of our findings and conclusions, many of the points raised have become moot, but we will comment upon them in order.

1. It is contended that the panel was not designated by the regional board as required by Water Code Section 13302(a). We find no evidence in the record that the panel was not properly constituted. In any event, since we have independently considered the evidence, the point is without merit.

2. It is complained that the agenda material for the panel was not provided to petitioner prior to the hearing. We know of no requirement for such presentation, and the point raised is without merit.

3. It is complained that the panel refused to admit evidence of settleable solids for the period of May 18, 1972, through June 1, 1972. This point has merit. The objections to the foundation of this evidence at the time of hearing appear to relate to the weight to be given to this evidence, rather than to its admissibility. For purposes of our review we have considered this evidence, and given it the weight to which we feel it is entitled. We feel impelled to add that the question of its admissibility was an extremely close one, and that, for the very reasons pointed out by counsel at the hearing, we are not inclined to place any great weight upon this evidence.

4. It is complained that, despite petitioner's request pursuant to Water Code Section 13302(b), petitioner was not given a copy of the panel report prior to the regional board meeting of June 9, 1971. The record does not reflect when the report was actually prepared, or whether there was sufficient time to provide petitioner with a copy prior to the meeting. If sufficient time was available, the report should have been provided to petitioner. We cannot, however, under the circumstances of this case, perceive that petitioner's position was prejudiced due to absence of the report.

5. Petitioner complains that the panel made a finding of pollution without evidence thereof. This appears true. The regional board, however, made no such specific finding. In any event, in view of our finding, the question is moot.

6. Petitioner alleges that there was no direct evidence of sludge discharge, and that the staff's evidence was based on theoretical calculation. This is substantially correct, although there is other evidence in the record which would indicate at

least an indirect discharge of inadequately treated sludge to the receiving waters.

7. Petitioner complains of various other procedural matters which petitioner feels deprived it of a fair hearing. These include refusal to allow immediate cross-examination of witnesses, receipt of evidence by reference, inadequate time to study staff statements, receipt of small quantities of evidence, argumentative questioning, and like matters. We have reviewed all of these complaints and find them without merit. The records of the regional board were open to review prior to the hearing and adequate opportunity was thereby provided for such review as petitioner desired prior to the hearing. A review of the record indicates on its face that petitioner was adequately prepared for the hearing, and did in fact fully and competently present its side on the issues involved.

8. Finally, petitioner complains that the action of the regional board was precipitous and that petitioner should have been given more time to meet the necessary requirements. By reason of our findings, we do not agree with petitioner.

V. FINDINGS

After a full and complete review of the record, and having considered all of the contentions of petitioner, we find:

1. That there is no evidence in the record sufficient to sustain a finding of actual violation by petitioner of requirements relating to suspended solids in the effluent, discoloration of receiving waters, existing pollution, nuisance or excessive dry weather volumes, either because no evidence was offered on these matters, or because there were no requirements in effect to which evidence actually admitted could relate.

2. That there is evidence in the record which demonstrates actual violations of requirements relating to settleable solids, improper discharge of sludge or supernatant liquor, or floating or suspended solids in the receiving waters. The evidence of actual violation we feel is not such as to disclose an appropriate basis for imposition of a connection ban.

3. The evidence is overwhelming that there was in fact a threatened violation of applicable requirements at the time of the hearing. At that time, the petitioner was operating facilities which can generously be described as being in a substandard condition of repair. Substantial portions of the plant of petitioner were completely inoperative for their design purposes. At the same time, actual flow was approaching design capacity. Historically, petitioner's plant had not been able to approach the applicable

settleable solids requirement, even presumably when the plant was in effective operating condition. Even if the contemplated repairs and/or improvements would be sufficient to bring petitioner within requirements (which is by no means certain upon the record before us), these repairs and improvements will not be completed prior to October 15, 1972. Violations have on occasion occurred, and the facts and circumstances are such that additional material and substantial violations are clearly threatened. In addition, petitioner is admittedly in threatened violation of the settleable solids requirements which are to become effective on January 1, 1974, under Order 72-24.

4. Due to the foregoing circumstances, any increase in the discharge of waste will increase the likelihood of violations of requirements, which will necessarily further impair water quality, and a connection ban is appropriate.

5. The petitioner has failed to maintain monitoring records as required.

VI CONCLUSIONS

We therefore are impelled to the following conclusions:

1. That the action of the California Regional Quality Control Board, Central Coast Region, in issuing Order No. 72-4 requiring petitioner to cease and desist from discharge of waste contrary to requirements was proper and appropriate in that petitioner was violating or threatening to violate applicable requirements relating to settleable solids, discharge of sludge

and supernatant liquor, and floating or suspended solids in receiving waters, and that the threatened violations of applicable requirements were such that imposition of a connection ban in Order No. 72-4 was appropriate and proper. Order No. 72-4 should be, and is hereby, affirmed on these grounds.

2. That the relief requested by petitioner in its petition for review should be, and is hereby, denied.

Adopted as the order of the State Water Resources Control Board at a meeting duly called and held at Los Angeles, California.

Dated: September 7, 1972

BOARD MEMBERS SIGNATURES